

§ 106-701. Right to farm defense; nuisance actions.

(a) No nuisance action may be filed against an agricultural or forestry operation unless all of the following apply:

- (1) The plaintiff is a legal possessor of the real property affected by the conditions alleged to be a nuisance.
- (2) The real property affected by the conditions alleged to be a nuisance is located within one half-mile of the source of the activity or structure alleged to be a nuisance.
- (3) The action is filed within one year of the establishment of the agricultural or forestry operation or within one year of the operation undergoing a fundamental change.

(a1) For the purposes of subsection (a) of this section, a fundamental change to the operation does not include any of the following:

- (1) A change in ownership or size.
- (2) An interruption of farming for a period of no more than three years.
- (3) Participation in a government-sponsored agricultural program.
- (4) Employment of new technology.
- (5) A change in the type of agricultural or forestry product produced.

(a2) Repealed by Session Laws 2018-113, s. 10(a), effective June 27, 2018.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void. Provided, however, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

(f) In a nuisance action against an agricultural or forestry operation, the court shall award costs and expenses, including reasonable attorneys' fees, to:

- (1) The agricultural or forestry operation when the court finds the operation was not a nuisance and the nuisance action was frivolous or malicious; or
- (2) The plaintiff when the court finds the agricultural or forestry operation was a nuisance and the operation asserted an affirmative defense in the nuisance action that was frivolous and malicious. (1979, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 892, s. 1; 2013-314, s. 1; 2018-113, s. 10(a).)